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The Association for Telecommunications Professionals in Higher Education

Addressing
Voice, Data, and Video
Communications Needs
for Higher Education

December, 2000

NEWS

UConn Wins in Court

Connecticut Court Holds that UCONN Does Not Need a Cable Franchise to Provide Video Programming on Campus

Alan Fishel, Attorney

Arent Fox Kintner Plotkin and Kahn

There are several advantages to providing video programming to students on campus through an institution's own facilities, including the control over the programming selection, the ability to rapidly change the programming to address students' needs, and an opportunity to provide a package of voice, video, and data services to students that is determined by the college or university. Not surprisingly, many institutions have chosen to provide video programming to students on their campuses through their own facilities. While many have chosen this path, only one has been sued by the local cable operator for doing so: the University of Connecticut.

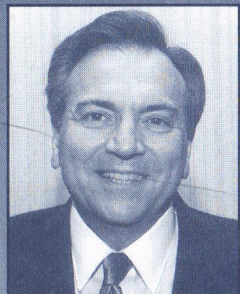
In 1999, Charter Communications brought a state court lawsuit against the University of Connecticut challenging the

the University of Connecticut in the proceeding. With a team that included myself, the Attorney General of Connecticut, and two Assistant Attorney Generals, we filed a summary judgment motion with regard to the two remaining counts of Charter's complaint.

Charter's two remaining counts were premised on its contention that the University was illegally providing video programming on campus. Charter claimed that the University needed a cable franchise to provide such programming because, Charter alleged, the University was providing "cable service" through a "cable system" that it owned, managed, or controlled. At oral argument on the motion for summary judgment, and at a second oral argument requested by the court, I argued, among other things, that the University of Connecticut is not providing "cable

court agreed and granted the University's motion for summary judgment, thereby ending Charter's lawsuit. The Court also held that Charter does not have the right to force access to the University's property to provide Charter's service over the University's objections because Connecticut's mandatory access law does not apply to state property.

Other colleges and universities may benefit from the court's decisions in this case depending upon the circumstances facing those institutions. Moreover, the court's ruling may help other colleges and universities not only in the event that they need to defend a suit brought by a cable provider but also in their planning of how video programming, high-speed Internet service, and



From the President

Anthony R. Tanzi, RCDD
Brown University

University's right to provide video programming to its students on campus. After the court dismissed some but not all of the counts, I was asked to represent

service, and therefore does not require a franchise, because it is providing video programming only on campus and not to members of the general public. The

telephone services should be delivered to students on campus. In addition to representing clients in
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I was delighted to read recently in the *Providence Journal Bulletin*, our statewide newspaper, that my state, Rhode Island, is a model for a wired state. I wondered what this would mean for me as a citizen, as a consumer, and in the role of technologist at my institution.

The article says that many companies, including traditional telephony providers, are laying tens of thousands of miles of fiber optic cable, building a statewide infrastructure to support voice, data, and video services for an expanding information-based economy. They expect to reap handsome returns on their investments as they build out the new highways that provide for the information-handling needs of a full economy.

Trying to put some of this in perspective, we need to recall that Rhode Island is the smallest state, having approximately 1,250 square miles in land mass, 10 colleges and universities, a community college system, and approximately 320 K-12 schools.

Together, these institutions serve about 120,000 full- and part-time students from a state population of about 950,000.

So, what does this massive infrastructure build-out mean for the state? As a citizen, I consider this good news as I expect that this infrastructure will be the platform that will attract high-tech companies to Rhode Island. With the arrival of these companies, there should be a rapidly expanding job market. This is also good as it increases our tax base, provides quality jobs, and helps build a strong community.

To me as a consumer of services, this huge infrastructure build-out obviously means competition among the service providers and an endless supply of services and bandwidth. This is good, as I expect to be able to obtain super services and bandwidth at what I hope are very reasonable prices.

In addition, the companies providing these services will need skilled staff to

maintain the systems behind the services that I want to purchase to make my life more productive and enjoyable. This means more high-paying jobs for those skilled in technology and support for the services provided by these companies.

These are some of the promises of competition. Competition really is a good thing; but, as the saying goes, the sword has two edges. Competition from all the infrastructure build-out will not only be among the potential service providers trying to be the first to offer and support new services and unlimited bandwidth, but also among the companies who need to hire the highly skilled people necessary to keep their infrastructure working. As a technologist for my institution, I see that the infrastructure build-out has the potential for a new plateau of consumer, business,

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ACUTA EVENTS

Winter Seminars

January 14-17, 2001
New Orleans, LA
Sheraton New Orleans

Spring Seminars

April 8-11, 2001
Newport Beach, CA
Newport Beach Marriott

30th Annual
Conference & Exposition
July 29-August 2, 2001
Lake Buena Vista, FL
Disney's Contemporary Resort

Fall Seminars

October 21-24, 2001
Albuquerque, NM
Hyatt Regency

Thanks, Y'all!

For the ACUTA Fall Seminars in San Antonio, Texas A & M and the University of Texas engaged in a little friendly competition to see who would have more attendees at the event. State Coordinator George Denbow and his colleagues at UT edged out the Aggies, but we wanted to acknowledge the extra efforts of both George and Walt Magnussen. We've always known it's our volunteers that make ACUTA unique and successful! Thanks, guys!

Spotlight on Volunteers

Manitoba Province Coordinator: Janice Sisson, Univ. of Manitoba

Although I've been at the University of Manitoba for 12 years, my involvement in telecommunications began in the finance department seven years ago. When I was given management responsibility three years ago, I became involved with ACUTA.

ACUTA is an incredible resource to have. Although the industry abounds with groups devoted to telecommunications, I have not

found any that focus on the educational marketplace. The listserve, especially, is always an invaluable source of information, and it becomes a kind of peer networking service with multiple peers.

Deregulation began earlier in the U.S. than in Canada and you are thus farther along in the process in some ways. Situations in Canada

often echo what has already happened in the U.S. so being a member of ACUTA provides "forewarning" of what we may expect here in Canada.

Universities in Canada are becoming active in the CRTC proceedings (the equivalent of your FCC proceedings). Currently we are discussing cable ownership, vendor access and security issues created when providing access to external vendors.

Looking to the future, I predict that we will continue in a state of constant change for at least another 5 years as the industry meets the challenges created by the new technologies like VoIP etc. This will require continued "rapid learning" on the part of all ACUTA members as our campuses strive to meet that challenge.

Janice_Sisson@UManitoba.ca.

Whitney L. Johnson

ACUTA LEGISLATIVE & REGULATORY AFFAIRS COMMITTEE

D C Update

Another Toll-Free Prefix

In addition to the 866 toll-free area code that went into effect last July, look for another new one, 855, in the first quarter 2001, according to the Alliance for Telecommunications Industry Solutions.

New WWW Domain Names

ICANN has approved seven new top-level domain names (TLDs), which registered companies expect to have

At least one of the Bells took the FCC to court over the release of confidential information. The U. S. Court of Appeals in Washington ruled that "the Commission failed to explain how its decision to release the data was 'consistent with its policy regarding the treatment of confidential information.'" All three of the judges agreed on this action and turned the case back to the FCC for further deliberation. (TR 10/20)

ACUTA members may read about the latest developments in telecommunications- and Internet-related issues in the most recent **Legislative and Regulatory Update**, an electronic newsletter prepared monthly by Wiley, Rein & Fielding. Members may also access archived copies of back issues of this document at www.acuta.org/legislation/index.cfm.

More E-rate letters were sent out in early

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available for use by Web site operators by spring 2001 according to *Telecommunications Reports* (TR 11/20). Unlike the currently used TLDs— .com, .edu, .org, and .net.—the seven new ones are not all short three letter names. The new names and their users are .name (personal Web sites), .biz (businesses), .info (commercial and noncommercial use), .pro (professionals such as doctors and lawyers), .coop (cooperatives), .museum (museums), and .aero (airlines).

FCC Information Leaks

At the FCC meeting on October 12 a new set of rules was released that are intended to plug the leaks of internal agency documents to the public. These rules apply to electronically transmitted documents as well as printed material. "The Commission specified that sanctions could be imposed on any person regulated by or practicing before the FCC who receives a document 'that he knew or should have known was released inadvertently or in any other-wise unauthorized manner,'" says *Telecommunications Reports* (TR 10/23).

Bell Company Audits

A number of published articles over the past couple years have focused on the audit reports that the Bell Companies send in to the FCC. The FCC has taken exception to the way equipment is listed and the way it is depreciated in some of these audits. In some cases the FCC noted that equipment listed was no longer in use and was still being depreciated in the audit. The FCC turned the audits over to the states for further consideration a while ago.

Another article (TR 11/13) notes that the FCC has rejected a proposal to ease property depreciation rules for ILECs and has decided to close the books on audits of certain ILECs' continuing property records (CPRs). Some critics of the ILECs are very concerned about the CPR aspect of their audits. Some of the concern stems from the differences between the depreciation reserve balances on their regulatory books and the corresponding balances on their financial books. It seems that the ILECs have been able to keep different records for use in the audit that can include old equipment in these records as opposed to the records used for running the company.

USF - E-rate

The Universal Service Administration Co. has developed a plan through which the carriers will repay e-rate funding errors that have occurred. This plan has been adopted by the FCC, with some modifications. The errors stem from reimbursements made to ineligible vendors or for services on which schools and libraries weren't eligible to receive e-rate discounts.

Service providers now have a choice between (1) offsetting the erroneous payment against pending valid reimbursements or (2) repaying the erroneous disbursements in cash. The modifications made by the FCC include submitting a draft of the repayment/offset demand letter to the FCC Common Carrier Bureau for prior approval and setting deadlines for notifying service providers. (TR 10/30)

November commiserating over \$3.6 million. The total for this third year of the program is now over \$2.07 billion. In addition the USAC has announced that the filing window for the fourth year of the e-rate program will be Nov. 6, 2000 until Jan, 18, 2001. Applications must be postmarked on or before the ending date of Jan. 18, 2001 for consideration. (TR 11/6)

Restructuring

A number of companies have recently announced plans to "restructure." One of the big ones is AT&T who announced that they were splitting into four companies. There was earlier indication that they were looking for a buyer for the consumer long distance part of their business (TR, VR 10/9) and within a few days came the announcement of the split. (TR 10/30)

Canada's BCE, Inc. the major telecom neighbor to the north, followed AT&T within a few days, with a plan to split into four units. This split seems to be along similar lines to the AT&T plan. (TR 10/30)

WorldCom is also making changes, not splitting but getting rid of no-growth parts of the business—including long distance. "The new company, trading under the symbol MCIT and using the MCI moniker, will be made up of consumers, small-businesses, wholesale long distance, and dial-up Internet services that offer high cash flow but little or no growth." (TR 11/6)

Board Report

November

The ACUTA Board of Directors met via conference call on November 2.

The Board reviewed the ACUTA budget performance as of September 30, 2000. The general health of the ACUTA budget is good. Expenses are still within year-end projections, notwithstanding any unforeseen expenses.

The Board unanimously approved the following new committee member appointments:

Higher Ed Advisory Panel: Richard Katz (EDUCAUSE); Membership: Paula Loendorf (Duke Univ.); and Awards: Pat Todus (Northwestern Univ.), Ron Kovac (Ball State Univ.), Glen Fleischhacker (AT&T), and Gary Luft (VarTec Telecom).

The Board approved a proposed change in the Thursday Annual Conference agenda replacing two general sessions with four concurrent breakout sessions followed by a general session. The modification will take place at the 2001 Annual Conference.

President Anthony Tanzi presented a brief overview regarding expected deliverables for the "expeditionary task force" projects chartered through the strategic planning session. There will be more to report in the future as the projects develop.

Respectfully submitted,



David E. Lewis, University of Rochester
ACUTA Secretary/Treasurer

Higher Education and Truth-in-Billing

Daniel J. Smith, Attorney

Wiley, Rein & Fielding

As of April 2000, a set of rules adopted by the Federal Communications Commission to "reduce slamming and other telecommunications fraud" became effective. These requirements, known as the "truth-in-billing" rules, require all bills issued by telecommunications common carriers to provide specific information and conform to a general format. The key notion is that the rules apply to telecommunications common carriers. By definition, a telecommunications common carrier is any provider of telecommunication services for hire, even if their services are only offered to a limited portion of the public. However, colleges and universities historically have not been considered telecommunications carriers, even though they sometimes engage in activities that appear similar to those conducted by carriers. Therefore, it is clear that, if a college or university does not provide telecommunications services or bill for such services, these rules do not impact its operations. Moreover, based on the historical classification of colleges and universities as non-common carriers it is not likely that, for purposes of federal communications law, such federal truth-in-billing rules would directly apply.

Yet, the story does not end here. While the rules only apply directly to carriers, they could apply *indirectly* to colleges and universities that either resell services or issue bills on behalf of a carrier. The Commission has stated that a carrier that uses another entity to bill and collect on its behalf "still bears the responsibility of ensuring that such charges appear on the bill remitted to the consumer in a manner that

college/university may contain provisions that obligate the school to comply. Such contractual language could directly reference the truth-in-billing requirements when discussing billing methods. Another potential source of obligation could be found in general language stating that the college will be responsible for compliance with all applicable federal rules. Thus, a review of such agreements will be necessary to determine if a college or university is obligated to comply with truth-in-billing rules.

Still, the story does not end there. The above discussion only concerns the *federal* truth-in-billing obligations. The FCC has expressly stated that each state regulatory agency is free to enact and enforce additional regulations, provided they do not conflict with the federal guidelines. The jurisdiction of these state agencies may be broader than the jurisdiction of the FCC (*i.e.*, reach beyond carriers), and their rules could define, for purposes of state law, a common carrier differently. As a result, it is possible that, while a school might not be covered directly by the federal truth-in-billing rules, the same would not be true with respect to a state's truth-in-billing rules. Again, an individualized examination of a particular state's laws and regulations and the college or university's provision of telecommunications services are required to determine the reach of such billing rules.

In the end, whether the FCC's or a state's laws and rules governing billing practices and format apply to the billing activities of a college or university requires an examination of how a school provides telecommunications services, a review of any carrier-to-school contracts, and an inspection of state laws. What is clear, however, is that each college and university must examine its particular situation to ensure its compliance with the law.

telecommunications-related litigation, I have represented many large users of telecommunications services in assessing their needs and drafting and negotiating their telecommunications agreements. In my view, decisions such as the ruling here should be factored into what are often difficult choices to make. In the field of telecommunications, it is best to rely on experts and consider all options before making final determinations and executing agreements that will be difficult, if not impossible, to undo if they later turn out to be unsatisfactory. In this area, an ounce of prevention is probably worth about a ton of cure.

As for the litigation itself, I strongly believe the court's decision was fully supported by the law and the facts. The cable laws are not meant to require that everyone who provides video programming must obtain a cable franchise and be subject to all of the regulations that such a franchise entails. In a highly-publicized, highly-contested FCC proceeding in which I represented Entertainment Connections, Inc. (ECI), a private cable operator, the FCC held that ECI did not need a cable franchise when it was providing video programming. In conjunction with this programming, ECI subscribed to a common carrier service provided by Ameritech, where Ameritech's facilities carried the signal across the public rights-of-way. The FCC emphasized in that proceeding that there are a variety of circumstances where a cable franchise is not necessary. In the University of Connecticut case, the court in effect held that the University's situation is another one of those circumstances.

It took considerable time and effort for the University of Connecticut to fight for what it believed in: the right to provide video programming on its own campus. I have no doubt that its students will benefit greatly from its decision to put the students' interests first.

Alan G. Fishel is a partner in the Washington, D.C. law firm of Arent Fox Kintner Plotkin and Kahn. He specializes in telecommunications law and has represented many entities in disputes concerning access to property and wiring issues and franchising matters. He also represents clients in drafting and negotiating all types of telecommunications agreements. Mr. Fishel can be reached at 202-857-6450 or fishela@arentfox.com.

complies with the truth-in-billing rules. To meet this responsibility, the agreement governing the relationship between the carrier and the

Reach Daniel Smith at 202/719-3224 or djsmith@wrf.com.

President's Message

Continued from page 1

and educational offerings—and a staffing disaster.

It is known that not-for-profits do not meet market salary, benefit, or “perk” expectations. In today's world, we, in our role of technology providers at our institutions, must be able to offer something extra to staff to keep them happy and productive. To date, I have not found the magic list (but I promise to share it with you as soon as I do!)

I asked my colleagues at other local colleges and universities what they thought of the Providence Journal Bulletin article and what the promise of all these services and bandwidth meant to them. Not surprising, most shared my vision of this as good for the person and the state. They felt that these providers offer educational institutions the opportunity to explore and collaborate on an as-yet-to-be-defined dimension. All felt that only good things would come out of this endeavor.

What was surprising (beyond their concern for our ability to pay for needed services and bandwidth) was their concern for our institutions' ability to attract and keep talented staff to support the use of these highways and systems! I was rather pleased at their understanding of the issues that confront those of us who provide support for them.

None of us can see how the future will play out. Yet, somehow I feel that in some small but significant way, perhaps as a result of many discussions with colleagues over the issues we all face, perhaps by many articles describing the promises and challenges of technology, something has begun to click with those we support.

People are more aware of the issues, costs, and constraints of providing support for academic and administrative services at our institutions. They have some idea of the pressure points we all share, and have begun to realize that even when services and bandwidth are unlimited, costs come without limits as well. They have begun to see the scope of the task ahead of us and better understand both the issues and opportunities. Thank goodness for good things!

Speaking of which, we have reached the time of year for all of us to pause and reflect on what we have experienced and accomplished this year. Undoubtedly, many of us have gone from the madness of Y2K (oh, how sweet it is to recall it and not have to relive it!) to the reality of a new millennium and all of its promise.

May all your dreams be fulfilled and your expectations achieved. Enjoy the holidays and the New Year!

As always, I can be reached at Anthony_Tanzi@brown.edu.



Jeri Semer, CAE
Executive Director

From ACUTA Headquarters

Jeri Semer

FCC Clarifies Detariffing, Issues Interim 3G Wireless Report

As you may recall, the FCC acted in 1996 to detariff interstate domestic interexchange service. In the four years since the FCC's detariffing Order, it has been unclear exactly how detariffing would affect ACUTA institutional members. Our members have asked whether carriers will adopt contract language containing many of the provisions previously in the tariffs, will these contracts be negotiable, and when tariffs go away, how can the public stay informed about policies and terms previously stated in the tariffs? And, what will be the effect on current contracts?

In recent weeks, the FCC has also indicated its intention to eliminate tariffs on international

long distance calling. On October 18, the Commission issued a Notice of Proposed Rulemaking, seeking comments by November 17 on whether it should eliminate international tariffs. In its Notice, the FCC tentatively concluding that, with limited exceptions, tariffs are no longer necessary to ensure that carriers offer international service at just and reasonable rates and to protect consumers.

Although some of our questions remain unanswered, the FCC released an Order on November

17 that somewhat clarifies detariffing. Here are a few highlights of the decision:

1. In order to provide the opportunity for a coordinated timetable for domestic and international detariffing, the deadline for detariffing mass-market consumer interstate interexchange services was extended to April 30, 2001. However, the deadline for contract services, applicable to most ACUTA members, remains January 31, 2001.
2. The Commission permitted carriers to continue filing mixed

domestic and international contract tariffs as long as they include a banner making clear that the domestic portions are for information purposes only and are controlled by the underlying contract.

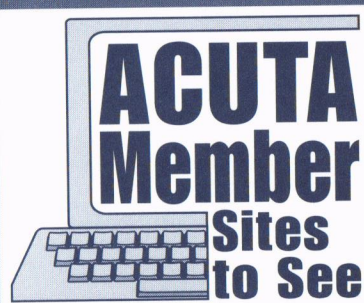
3. The Commission required carriers to post the same kind of information that is currently in their tariffs on their web sites after detariffing.

ACUTA has received a more detailed analysis of the November 17 detariffing order from Wiley, Rein and Fielding, and we are making it available to our members on the ACUTA Web site at <http://www.acuta.org/html/ccb1.cfm>.

A copy of the FCC's November 17 Order is also available online at http://www.fcc.gov/Bureaus/Common_Carrier/Orders/2000/da002586.txt.

In another matter, the FCC has released its Interim Report on the allocation of spectrum for Third Generation Wireless services (3G). This reallocation of spectrum may have an impact on current holders of Instructional Television Fixed Service (ITFS) licenses. The FCC's report and other information on the 3G initiatives are now available on the Web at <http://www.fcc.gov/>

**MORE
FCC**



Web Site Recognition

ACUTA's Web site recognition task force has made some improvements to the program which recognizes outstanding institutional Web sites. Selections will be made quarterly based on how well each site executes a selected theme.

For the last quarter of 2000, the theme selected was student services. Congratulations to the two schools whose sites were selected, **Florida State University** (<http://www.otc.fsu.edu>) and **Ohio University** (<http://www.ohio.edu/technology>).

For more information and the nomination form, access the ACUTA site at <http://www.acuta.org/html/wsrp.cfm>. The next quarterly winners will be selected in February and announced in March.

3G. We urge members whose institutions hold ITFS licenses to familiarize themselves with these issues, or to pass this information along to the office or individual on your campus that is responsible for ITFS. (Please see the ACUTA Alert on 3G and ITFS, dated 11-6-00, available on the Web at <http://www.acuta.org/html/itfs1.cfm>.)

We will continue to monitor and inform ACUTA members of new developments on these important regulatory matters. Please feel free to direct your questions to me at jsemer@acuta.org, or 859/278-3338, ext. 25.

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